

FILED

JUL 27 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ERNESTO MARTINEZ PEREZ,

Petitioner - Appellant,

v.

BERTA LOCKHART,

Respondent - Appellee.

No. 05-15181

D.C. No. CV-04-00125-WDB

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
William D. Browning, District Judge, Presiding

Submitted July 24, 2006^{**}

Before: ALARCÓN, HAWKINS and THOMAS, Circuit Judges.

Federal prisoner Ernesto Martinez Perez appeals pro se from the district court's judgment denying his 28 U.S.C. § 2241 petition. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Perez contends that the federal Bureau of Prisons should have calculated his federal sentence to run concurrently with his undischarged Arizona state sentence. The district court found that the Bureau of Prisons appropriately calculated Perez' federal sentence to run consecutively with his prior state sentence and denied Perez' Section 2241 petition. We agree with the district court. The Bureau of Prison's refusal to run Perez' federal sentence concurrently with his prior state sentence was not arbitrary or capricious because (1) 18 U.S.C. § 3584 provides that multiple terms of imprisonment that are imposed at different times run consecutively unless the sentencing court orders them to run concurrently, (2) the judgment in the federal case was silent on the issue, and (3) the federal sentencing court expressly denied Perez' request to amend judgment to order that sentences run concurrently. *See Taylor v. Sawyer*, 284 F.3d 1143, 1149 (9th Cir. 2002) (affirming the district court's denial of a section 2241 petition where Bureau of Prisons refused to treat prisoner's state and federal sentences as concurrent when federal sentencing court made it clear that concurrent sentences were not "consistent with the goals of the criminal justice system").

AFFIRMED.